

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X 07 Civ. 6966
TOWN OF GREENBURGH,

Plaintiff,

REPLY AFFIRMATION

against,

SPECTRASERV, INC. and LIBERTY MUTUAL
INSURANCE COMPANY,

Defendants.

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SPECTRASERV, INC. and LIBERTY MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiffs,

against,

M.G. McLAREN, P.C., and DOLPH ROTFELD
ENGINEERING, P.C.,

Third-Party Defendants.

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RELIEF SOUGHT

Third-party defendant Dolph Rotfeld Engineering, PC initially made its motion pursuant to Fed. R. Civ. P. 12(b)(6) for an Order dismissing the third-party complaint of Spectraserv, Inc. and Liberty Mutual Insurance Company. In its Affirmation in Opposition, plaintiff submits extrinsic evidence, including affidavits and documents. Consequently, Dolph Rotfeld Engineering respectfully requests grant a motion pursuant to Fed. R. Civ. P. 56(b) in addition to Fed. R. Civ. P. 12(b)(6).

GROUND FOR RELIEF

The motion is made on the ground that this third-party complaint fails to state a claim on which relief may be granted. As is more fully explained in the accompanying Memorandum of Law:

1. Third-party plaintiff's claims of negligence and tortious interference are barred by CPLR §214(4),(6), the applicable statutes of limitations, and
2. Third-party plaintiff's tortious interference claim should be dismissed as a matter of law as an agent cannot be held liable for inducing its principal to breach a contract with a third party.

The court granted third-party defendant Dolph Rotfeld Engineering, PC permission to make the instant motion at a pre-motion conference on June 20, 2008.

RECORD SUPPORTING MOTION

This motion is based on the following documents:

1. the attached Notice of Motion;
2. the accompanying Memorandum of Law;
3. the Complaint of the Town of Greenburgh (Attached as Exhibit A);
4. the Third-party Complaint of Spectraserv and Liberty Mutual Insurance Company;
(Attached as Exhibit B)

5. the Answer and Counterclaim of Spectraserv and Liberty Mutual Insurance Company
(Attached as Exhibit C)

WHEREFORE, DOLPH ROTFELD ENGINEERING, P.C. respectfully requests that the Court issue an Order dismissing Third-Party Plaintiffs SPECTRASERV, INC. and LIBERTY MUTUAL INSURANCE COMPANY Third Party Complaint against DOLPH ROTFELD ENGINEERING, P.C.; or issuing any other relief the court deems just and proper.

Dated: New York, New York
August 7, 2008

Yours, etc.,
GOGICK, BYRNE & O'NEILL, LLP
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DOLPH ROTFELD ENGINEERING, P.C.



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